

Exhibit 13

Marc Toberoff (MT 4862)
TOBEROFF & ASSOCIATES, P.C.
2049 Century Park East, Suite 2720
Los Angeles, CA 90067
Tel: 310-246-3333

Attorneys for Defendants Lisa R. Kirby, Barbara J.
Kirby, Neal L. Kirby and Susan N. Kirby

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MARVEL WORLDWIDE, INC.,
MARVEL CHARACTERS, INC. and
MVL RIGHTS, LLC,

Plaintiffs,

-against-

LISA R. KIRBY, BARBARA J. KIRBY,
NEAL L. KIRBY and SUSAN N. KIRBY,

Defendants.

Civil Action No. 10-141 (CM) (KF)

[Hon. Colleen McMahon]

[ECF Case]

**DECLARATION OF NEAL ADAMS IN SUPPORT OF
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT AND DEFENDANTS'
OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

KIRBY-4203

I, Neal Adams, hereby declare as follows:

1. I am familiar with the facts set forth below and make this declaration in support of the truth as I know it. The facts set forth herein are known to me of my own personal firsthand knowledge and, if called as a witness, I could and would testify competently thereto under oath. Nor is it my belief or understanding that what I say here differs from the true understanding of any freelancer or publisher.

2. I am a professional comic book artist, who has worked in the comic book business since the late 1950s.

3. I began drawing comic books in the late 1950s. After graduating from the School of Industrial Art in Manhattan, I debuted professionally in one panel of *Adventures of the Fly* No. 4 (January 1960), which was part of the superhero line created and edited by Joe Simon and Jack Kirby and published by Archie Comics. Soon afterward, I drew and wrote features published in *Archie's Joke Book Magazine*, and drew the syndicated *Ben Casey* newspaper strip from November 1962 to September 1964.

4. Shortly thereafter, I drew on a freelance basis artwork published in numerous DC Comics titles, including *Action Comics*, *Batman*, *Detective Comics*, *The Brave and the Bold*, *Superboy*, *Our Army at War*, *Star-Spangled War Stories*, *World's Finest Comics*, *Adventure Comics*, *Superman's Pal, Jimmy Olson*, *Strange Adventures*, *Superman's Girl Friend, Lois Lane*, *The Spectre*, *Tales of the Unexpected*, *Adventures of Jerry Lewis*, and *The Adventures of Bob Hope*.

5. In the late 1960s, I drew on a freelance basis for Marvel Comics while continuing to sell freelance artwork to DC Comics. I drew the artwork published by Marvel in *The X-Men* Nos. 56 (May 1969) through 63 (December 1969) and No. 65 (February 1970). I wrote and drew the horror story "One Hungers" published by Marvel

in *Tower of Shadows* No. 2 (December 1969) and co-wrote another story published in *Chamber of Darkness* No. 2 (December 1969). I also plotted and drew a 2-issue story, that was dialogued by the incredible Stan Lee, published in *Thor* Nos. 180 (September 1970) and 181 (October 1970) and *The Avengers* Nos. 80 (September 1970) and 93 (November 1971) through 96 (February 1972).

6. All told, I produced and sold freelance artwork to DC Comics from 1967 to 1977 and to Marvel from 1969 to 1981. I currently produce freelance work for Marvel and DC Comics, though today I work under contract on a freelance basis.

7. I always set my own hours, work from my own house, and paid all of my overhead and expenses with no reimbursement of such expenses, nor any guarantee of payment by DC or Marvel. I completely accepted the financial risk of *creating* the artwork, not the publisher, because the publisher never legally obligated itself to pay for my work except in recent years. In fact, I worked with no contract or any real legal structure in the 1960's and 1970's.

8. There was no oversight of the creative process. For instance, Marvel did not provide me with a written synopsis or outline or require me to provide it with a synopsis, outline or sample of my intended artwork; nor did Marvel ask me to submit work in stages for Marvel's approval along the way. The basic understanding was that I would produce the artwork on my own and, since my work was thought to be "professional," if the Marvel editor liked it, Marvel would most likely buy it. However, there was no way to know that Marvel would in fact accept or pay for any such work, as it was not required to do so. My acceptance depended entirely on my assumption of my own ability.

9. Marvel, like DC Comics, was not obligated to buy my artwork or stories and only paid me for that freelance work it ultimately accepted and purchased for publication. In the same vein, as a freelancer, I was not obligated to Marvel or to any other publisher.

10. I would not be paid for any artwork rejected by the comic book publisher. I was only paid for the finished product the publisher chose to purchase. Neither Marvel nor DC took out taxes from their payments for my material, nor did I receive any medical benefits, insurance, vacation or sick pay of any sort. As I think about it, I had no financial security whatsoever as a freelancer in those days. Nor did I expect it as a freelancer.

11. For example, the very first cover I drew for Marvel, for "The X-Men" (a title that was to be cancelled in "two issues") was summarily rejected by Marvel's "publisher" since I had tied and bound the protagonists to the 3D logo "X-Men." He felt the figures might obscure the title of the book in some way. I suggested the figures would emphasize the title. However, he demanded a new cover (even though I had submitted a sketch for the original cover beforehand). I was not paid for two covers only for the cover Marvel decided to purchase.

12. I had other experiences like this with DC Comics, which was no surprise, as we all knew we were at the whim of the publisher. My ex-partner Dick Giordano was forced to quit as editor at DC Comics because he refused to reject, and **not pay** for, a job he commissioned from Gray Morrow, a well-known professional. My experience in any other freelance endeavor (book, magazine, advertising or other) is that during any of this time I would receive a long (2 page) or short (1/2 page) contract or letter, or what is known as a "purchase order" which, to the freelancer, was a "contract." But in comics, Marvel and DC did not commit themselves financially like this. For all of these reasons I never considered my artwork to be "work for hire." I also do not believe that Marvel or the other comic book publishers in the 1960's to the mid-1970's considered such freelance artwork to be "work for hire." In fact, no one in my knowledge ever uttered such a phrase.

13. It was a mom and pop, hand to mouth business, yet some people created brilliant work. During this confusing time comic book publishers and freelancers alike

had very little reason to believe comic books would “be around next year.” The circumstances and relationship during this period was clearly that of a purchase and assignment of completed freelance material once accepted by the comic book publisher, not ownership from inception as “work made for hire.” It was not viewed that way, nor did that jibe with the realities of the transaction described above.

14. For instance, Marvel’s and DC Comics’ checks to everyone through at least the mid-1970’s would include a printed or stamped legend on the back that stated that by endorsing the check, the artist “transfers” and “assigns” all right, title and interest in the artwork bought by Marvel.

15. Later, after the new Copyright Act emphasized “work for hire” with particularity, Marvel in or about 1979 or 1980 began placing retroactive “work for hire” language on the back of its checks and in other documents, such as the artwork releases it required artists to sign before Marvel would return to them their original artwork from decades earlier.

16. I would cross-out this “work for hire” language on the back of my checks when it began to appear.

I declare under penalty of perjury that to the best of my knowledge the foregoing is true and correct.

Dated: March 24, 2010


Neal Adams

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing was served electronically by the Court's ECF system and by first class mail on those parties not registered for ECF pursuant to the rules of this court.

Dated: March 25, 2011

Respectfully submitted,
TOBEROFF & ASSOCIATES, P.C.

/s/ Marc Toberoff

Marc Toberoff
2049 Century Park East, Suite 3630
Los Angeles, California 90067
Tel. (310) 246-3333
Facsimile: (310) 246-3101
E-mail: mtoberoff@ipwla.com

Attorneys for defendants
Lisa R. Kirby, Barbara J. Kirby, Neal L.
Kirby and Susan M. Kirby